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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/799,806

03/13/2004

Michael K. Julian

8383

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EXAMINER

MATTER, KRISTEN CLARETTE

ART UNIT

PAPER NUMBER

3771

MAIL DATE

DELIVERY MODE

06/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/799,806	Applicant(s) JULIAN, MICHAEL K.	
	Examiner Kristen C. Matter	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4,6 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4,6 and 13-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>JP 2004293058A</u> |

DETAILED ACTION

Claim Objections

Claim 6 is objected to because of the following informalities: reference characters must be in parentheses. Therefore, " ΔH " should be replaced with --(ΔH)--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng (US 2004/0106882) in view of Yamasaki et al. (US 5,183,034) and further in view of Yamazaki et al. (US 2003/0199796). Tseng discloses a massage system with a body (5) having a centerline, a pair of counter rotating neck massage heads and at least one pair of back massage heads wherein one of each pair is disposed on one side of the centerline and the other of said pair is disposed on the other side of said centerline (see Figure 4). Tseng does not disclose each neck massage head including a rotating unit which rotates about a rotational axis, wherein a connection of said neck massage heads to said rotating unit is offset from the rotational axis. Yamasaki et al. ('034) disclose a massage head including a rotating unit (34) that rotates about a rotational axis (lying parallel to shaft 331). The neck massage heads have a central axis (lying parallel to shaft 422) that outwardly projects from the rotational axis. It would have been obvious to one of ordinary

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skill in the art at the time the invention was made to provide Tseng's massage heads with rotating units in the neck massage heads for producing finger pressure massage and vibration depending on what type of massage therapy was desired. Yamazaki et al. ('034) does not teach the connection of the massage head to the rotating unit being offset from the rotational axis. However, Yamazaki et al. (2003/0199796) disclose similar massage heads in which the connection of the massage head (4) to the rotational unit (10') is offset from the rotational axis (parallel to shaft 12) (see Figure 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have offset the connection of the massage head to the rotating unit from the rotational axis in the modified device of Tseng and Yamazaki et al. as taught by Yamazaki et al. (2003/0199796) in order to more widely move the massage head for a more natural massage.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Hamilton (US 1,572,794). Tseng has everything as claimed but fails to disclose the lowest pair of back massage heads raised a distance from said other pairs of back massage heads. Hamilton teaches a massage apparatus in which the massage heads have various sizes and heights to conform to the natural position of the spine (see Figure 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to make the lowest pair of massage heads disclosed by Tseng a larger size or raised a distance from the other massage heads as taught by Hamilton in order to more closely conform to the natural position of the spine for a more comfortable massage. Furthermore, although Tseng does not disclose three pairs of back massage heads, absent a critical teaching or showing of unexpected results, it would have been

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an obvious design choice to one of ordinary skill in the art at the time the invention was made to use three pairs of back massage heads instead of two as disclosed by Tseng for increasing the area of the back able to be massaged simultaneously, since mere duplication of parts has no patentable significance unless a new and unexpected result is produced.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Makishi (JP 2001293056 A). Tseng further discloses the device can be covered with a cushion (see Figure 5 and paragraph 26). Tseng is silent as to a back pad selective positionable over the cover. Makishi discloses a selectively positionable back pad (4) that attaches to the outside cover of a massage chair (see Figure 6 of Makishi). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Tseng's device with a back pad as taught by Makishi in order to provide a more comfortable massage with additional cushioning.

Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tseng in view of Makishi (JP 2001293056 A) and further in view of Sarkozi (US 5,020,174).

Regarding claim 13, Tseng is silent as to a neck pad having an upper portion permanently attached to the cover and a lower portion selectively connectable to the cover. Makishi discloses a massage chair with a neck pad (3) that is selectively connectable to the cover of the massage chair. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Tseng's device with a neck pad as taught by Makishi in order to support the user's head while using the device. However, Makishi is silent as to the neck pad being permanently attached to the cover. Sarkozi discloses a neck support with a similar structure as

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taught by Makishi that is permanently attached to an outside cover (column 1, lines 55-70 and Figure 2). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the neck pad disclosed by Makishi permanently attached at the top as taught by Sarkozi to avoid misplacing the neck support when not in use (i.e., flips up over the top of the cover). Furthermore, absent a critical teaching and/or a showing of unexpected results, it is considered an obvious design choice to one of ordinary skill in the art to make the attachment (5a) permanent (i.e., stitches as opposed to hook and loop) since it appears that the modified Tseng device would perform equally well with a permanent attachment. In addition, it would have been an obvious design consideration to one of ordinary skill in the art to have the bottom portion (6) of the neck pad disclosed by Makishi and Sarkozi selectively connectable to the cover in order to securely position the neck pad in a desired position for a particular user since the releasable attachment is well known in the art.

Regarding claim 15, in the modified device of Tseng, Makishi, and Sarkozi, the neck pad (3) and back pad (4) are connectable to each other (see Figure 5 of Makishi).

Response to Arguments

Applicant's arguments filed 5/21/2007 regarding claim 4 have been fully considered but they are not persuasive.

In response to Applicants arguments that the Yamazaki references do not disclose a central axis that outwardly projects from the rotating unit towards the rotational axis, examiner points to Figure 8 of Yamasaki et al. ('034) in which the central axis (from tip to base of massage

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head (35)) clearly projects out from a rotational axis (parallel to shaft 351). Where these two axes cross is not commensurate with the scope of the claims.

Applicant's arguments filed 5/21/2007 regarding claims 6 and 13-15 have been fully considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wu, Goetz, Inada et al., and Hashimoto et al. are cited to show other massage pads. Lindquist and Shin are cited to show other massagers with various heights of massage heads.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270.

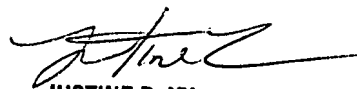
The examiner can normally be reached on Monday - Friday 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kristen C. Matter
Examiner
Art Unit 3771



JUSTINE R. YU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

6/19/07